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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re TelechaT Network, Inc.

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Serial No. 76535248

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Robert J. Schapp, Esq. for TelechaT Network, Inc.

Melvin T. Axilbund, Trademark Examining Attorney, Law  
Office 113 (Odette Bonnet, Managing Attorney).

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Before Quinn, Drost, and Zervas, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

On July 24, 2003, applicant TelechaT Network, Inc.  
applied to register the mark shown below on the Principal  
Register for services identified as "telephone and on-line  
dating service allowing participants to select, obtain and  
provide information and communicate with potential  
companions" in Class 45.



The application (Serial No. 76535248) contains a disclaimer of the term "network" and an allegation of a date of first use anywhere and a date of first use in commerce of September 1996.

The examining attorney<sup>1</sup> refused to register applicant's mark because the examining attorney required applicant to disclaim the term TELECHAT inasmuch as the term was held to be merely descriptive of applicant's services. 15 U.S.C. § 1056(a). See also 15 U.S.C. § 1052(e)(1). The examining attorney argues (brief at 3) that:

In the application the services are "telephone and on-line dating service[s] allowing participants to select, obtain and provide information, and communicate with potential companions." In part, therefore, applicant's service allows "participants to ... communicate with potential companions." Since this is what TELECHAT signifies, the requirement that it be disclaimed is proper.

In response, applicant argues (brief at 8):

Applicant is not a telephone company, nor does applicant offer any other communication technology.

Therefore, the relevant public would not commonly understand the word TELECHAT as relating to dating

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<sup>1</sup> The current examining attorney was not the original examining attorney in this case.

services. In fact, based upon the actual definition of the prefix TELE and the word CHAT, it is far more likely that the relevant public would assume the word to be related to instant messaging. As such, the Examining Attorney has failed to show that the word is generic, or a compound word, because the word fails to meet the test as articulated in the Examiner's own Manual.

After the examining attorney made the refusal final, applicant appealed to this board.<sup>2</sup>

For a mark to be merely descriptive, it must immediately convey knowledge of the ingredients, qualities, or characteristics of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980).<sup>3</sup> Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods or services.

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<sup>2</sup> We note that on April 18, 2006, Registration No. 3,081,158 issued to applicant for the following mark on the Principal Register for the identical services:



There is no disclaimer in that registration.

<sup>3</sup> Obviously, applicant's argument that its mark is not generic and that the examining attorney did not show by clear evidence that its mark was generic is not relevant to the descriptiveness issue in this case.

Gyulay, 3 USPQ2d at 1009; Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). Descriptiveness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

We begin our analysis by looking at the evidence of record in this case. This evidence includes the following definitions:

- Tele -
  - 1. Distance; distant: *telesthesia*.
  - 2. a. Telegraph; telephone: *telegram*.
  - b. Television: *telecast*.
- Chat - To converse in an easy, familiar manner; talk lightly and casually<sup>4</sup>

The examining attorney also included several printouts from an automated database and the Internet that involve the term "Telechat."

ACC May Put Off Vote

Our esteemed academics - The Negotiating Nine - reportedly are scheduled for another telechat this morning. They will debate. They will deliberate. They will not ask how each other's chemistry departments are doing.

*Richmond Times Dispatch*, June 18, 2003.

My Britney Problem - And Yours

Her telechat unwittingly displayed her shallow knowledge of the musical traditions she references,

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<sup>4</sup> The evidence also includes a definition of "network" and evidence supporting the descriptiveness of "network." Applicant has now disclaimed that term in this application.

but she may be completely aware of the how to use sex as a sales tool.

*Salon.com*, December 3, 2001.

E-Help Yourself

[T]he company will provide telechat (real time chat) support.

*ASAP*, March 1, 2000.

[T]his discussion was conducted by international conference call with 180 other people, with the help of a firm that specializes in largescale, hassle-free telechat.

*Newsweek*, May 24, 1993.<sup>5</sup>

The remainder of the evidence consists of newswire reports and Internet and electronic database articles from publications in countries such as Canada, Israel, and Australia. While the board no longer excludes evidence that consists of wire service excerpts and foreign publications, they are not entitled to as much weight as United States publications.

This Board would be blind if it did not recognize that during the past fifteen years, there has been a dramatic change in the way Americans receive their news. In the 1980's personal computers were in their infancy as was the transmission of news stories via the Internet. Put quite simply, we believe that communications have changed dramatically during the past fifteen years such that by now it is by no means uncommon for even ordinary consumers (much less sophisticated doctors and researchers) to receive news not only via tangible newspapers and magazines, but also electronically through personal computers. Thus, it is much more likely that newswire stories will reach the public because they can be picked up and "broadcast" on the Internet. In short, while we are

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<sup>5</sup> There are also a few isolated references on website use guidelines that use the term "telechat."

not saying that newswire stories are of the same probative value as are stories appearing in magazines and newspapers, we think that the situation has changed such that said newswire stories have decidedly more probative value than they did when this Board decided the Professional Tennis Council and Appetito Provisions cases.

In re Cell Therapeutics Inc., 67 USPQ2d 1795, 1798 (TTAB 2003).

In another case, the board discussed the change in the traditional method of considering foreign publications.

[I]t is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium. Further, the Internet is a resource that is widely available to these same professionals and to the general public in the United States. Particularly in the case before us, involving sophisticated medical technology, it is reasonable to consider a relevant article from an Internet web site, in English, about medical research in another country, Great Britain in this case, because that research is likely to be of interest worldwide regardless of its country of origin.

In re Remacle, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002)

In this case, we do not think that potential users of applicant's telephone and online dating services are as likely to refer to foreign publications and newswire services and, therefore, the significance of the term in Israel, Australia, and even Canada, is less significant in

helping us arrive at a conclusion as to the descriptiveness of the term in the United States.<sup>6</sup>

We now look at the evidence in light of the mark that applicant seeks to register, TELECHAT NETWORK and design. The examining attorney maintains that "applicant's service allows 'participants to ... communicate with potential companions.' Since this is what TELECHAT signifies, the requirement that it be disclaimed is proper." The problem we have with this case is that it has been well more than one hundred years since Alexander Graham Bell invented the telephone and the Internet is no longer a novelty. There has been a significant length of time for people to "communicate with potential companions" by telephone or the Internet. Nevertheless, there is little evidence that consumers would understand that the examining attorney's suggested meaning is the one that will immediately come to mind when these consumers encounter the term. This is likely the case because of the nebulous nature of the term "Telechat." While consumers may understand that the term can mean using a telephone to converse in an easy, familiar

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<sup>6</sup> We add that the examining attorney did include two similar references from websites for radio stations that use the same phrase: "proud to be a member of the telechat network." This phrase is equivocal because it is not in proper trademark style but it appears to identify a single source. We note that applicant's specimen indicates that its services are marketed through radio stations.

manner with potential companions, it is not at all clear that consumers will draw this conclusion. See In re Sundown Technology Inc., 1 USPQ2d 1927, 1928 (TTAB 1986) ("[W]e find that 'GOVERNOR' applied to applicant's [controls used to affect, compress, limit and shape the sound from the output stage of an electrical musical amplifier] is nebulous in meaning"); In re WSI Corporation, 1 USPQ2d 1570, 1572 (TTAB 1986) ("No doubt the SAT element [in SUPERSAT] would suggest satellite involvement to many but the nature of such involvement would not be at all clear, without imagination, perception or reflection on the part of potential customers"); In re Harrington, 219 USPQ 854, 856 (TTAB 1983) (COLLEGE ACADEMY "is at most suggestive of special summer learning programs for gifted and talented children in grades 4 to 8"). Similarly, it is not apparent that the examining attorney's interpretation of the mark will immediately come to mind when prospective purchasers encounter the term TELECHAT used in association with applicant's services. In re The Rank Organization Limited, 222 USPQ 324, 326 (TTAB 1984) (The "fact that the term 'LASER' is capable of being analyzed does not render the term merely descriptive"). See also Remacle, 66 USPQ2d at 1224 ("It is well-established that the determination of mere descriptiveness must be made not in the abstract or on



the basis of guesswork"). When the terms are combined, they create a term that appears nebulous and non-specific.

Because we have doubts as to whether applicant's mark is merely descriptive, we resolve those doubts, as we are required to do, in applicant's favor. In re Morton-Norwich Products, Inc., 209 USPQ 791, 791 (TTAB 1981) (The Board's practice is "to resolve doubts in applicant's favor and publish the mark for opposition"). See also Remacle, 66 USPQ2d at 1224.

Decision: The refusal to register applicant's mark without a disclaimer of the term "Telechat" is reversed.